IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3-3-2005

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRL.R.C.Nos.838 to 841 of 2004
and
CRL.M.P.Nos.5825, 5827, 5840 and 5842 of 2004

1. R.Pappannan
2. Shanti .. Petitioners in Crl.RCs 838 & 839/04/Accused 2 & 3

G.P.Sivanesan .. Petitioner in Crl.RCs.840 & 841/04/Accused

vs

1. Inspector of Police
   Central Crime Branch
   Egmore, Chennai
2. Shobana .. Respondents in all the revision cases/Complainant

Crl.R.C.Nos.838 and 839 of 2004 are preferred under Sec.397 read with 401 of the Code of Criminal Procedure against the order of dismissal by the Additional Chief Metropolitan Magistrate, Egmore, Chennai, made in Crl.M.P.No.3527 of 2003 in C.C.No.7572 of 2003 and in Crl.M.P.No.3547 of 2003 in C.C.No.7571 of 2003 dated 16.3.2004.

Crl.R.C.Nos.840 and 841 of 2004 are preferred under Sec.397 read with 401 of the Code of Criminal Procedure praying to call for the records in Crl.M.P.No.3550/03 in C.C.No.7571/2003 and in Crl.M.P.No.3328/03 in C.C.No.7571/2003 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai 8, dated 16.3.2004.

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For Petitioners in Crl.RCs.838 and 839/04 : Mr.M.Jaichandran

For Petitioner in Crl.RCs.840 and 841/04 : Mr.R.Ragupathy
Senior Counsel
for Mr.K.P.S.Palanivelrajan

For 1st Respondent in all RCs : Mr.A.N.Thambidurai
Government Advocate(Crl.Side)

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For 2nd Respondent
in all RCs : Mr.Raghunathan
for Mr.D.Srinivasan.

COMMON ORDER

This order shall govern these four revision cases in Crl.R.C.Nos.838 to 841 of 2004.

2. At the instance of the second respondent, de-facto complainant, a case came to be registered by the first respondent police, the Central Crime Branch, in Crime No.584 of 2002 and on completion of the investigation, two separate final reports were filed before the learned Additional Chief Metropolitan Magistrate, Egmore, Madras, which were taken cognizance in C.C.Nos.7571 and 7572 of 2003 respectively.

3. Crl.R.C.Nos.838 and 839 of 2004 have been filed by the first and the second accused in both the cases, while Crl.R.C.Nos.840 and 841 of 2004 have been filed by the third accused in both the cases.

4. This Court heard the learned Senior Counsel for the petitioner in Crl.R.C.Nos.840 and 841/2004, the learned Counsel for the petitioners in Crl.R.C.Nos.838 and 839 of 2004, the learned Counsel for the intervening second respondent, who is the complainant in both the cases and also the learned Government Advocate for the first respondent.

5. The copies of the charge sheets filed in both the matters, are placed in the hands of this Court, which are perused.

6. From the perusal of the materials available before this Court, it could be seen that the husband of the complainant on the assurance of his friend, the third accused herein, purchased lands for a consideration of Rs.17,00,000/- from the third parties, in respect of which the first and the second accused had also made the representations. The lands were actually purchased from the third parties for Rs.17,00,000/- under different sale deeds. The first and the second accused though hail from Ooty, they owned lands at Karnataka, next to which the property was shown and purchased by the complainant's husband. Thereafter, pursuant to a conspiracy hatched up by all the three accused, they received Rs.33,00,000/- by way of Demand Drafts then and there, from the complainant's husband at different points of time on their assurance of making the lands fertile, putting irrigation facilities and reclaiming the lands and for the purpose of cultivation also. Subsequently, when an inspection was made by the complainant's husband and the complainant, they found that nothing had happened, and the lands were found in the original state of purchase and also found that the motor what was purchased by the accused, was not kept in the field; but, it was kept in the field of the first and the second accused. At one juncture, when it was questioned by the

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complainant's husband, the first and the second accused came forward to demand further a sum of Rs.25,00,000/- for making the land fertile and for the purpose of cultivation and they told that only then, the cultivation could be progressively done. After hearing the same, complainant's husband had got a massive heart attack, and he died. There were exchange of notices between the parties; but in vain. The complainant has given the instant complaint. Under such circumstances, they have got to be proceeded with in accordance with law.

7. Accordingly, the first respondent police registered a case, investigated the same and filed two separate final reports. Now, they are pending in two Calendar Cases before the learned Additional Chief Metropolitan Magistrate, Madras. The first one was pertaining to the misrepresentation made by the accused for the purchase of the lands, thereby parting with a sum of Rs.17,00,000/-. So far as the second one was concerned, there was reposing confidence on the other party, and the complainant's husband handed over Rs.33,00,000/- by demand drafts at different points of time, and they were encashed by the accused. All the three accused filed applications for discharge in both the cases, and on enquiry, they were dismissed by the lower Court. In such circumstances, all these revision cases have been brought forth before this Court.

8. The learned Counsel appearing for the first and the second accused in the cases would submit that before the purchase, the complainant's husband made an inspection of the property and made a thorough enquiry; that he is not an ordinary ignorant man; but, he was a Doctorate in Physics; that only after a thorough enquiry, he had purchased the property from different parties; that it is not the case of the complainant that any part of the consideration was taken by these accused, and under such circumstances, once the property has been purchased, on verification of the title deeds and after seeing the property, there is no question of making the other party to believe so and part with any amount, and thus, the first case regarding the offence under Sec.420 of I.P.C. has no legs to stand, and hence, the first and the second accused have got to be discharged.

9. Added further the learned Counsel for the first and the second accused that so far as the second case was concerned, all the amounts which were received, were actually utilised for the purpose of making the land fertile; that this was also well within the knowledge of the complainant and her husband; that during the lifetime of the complainant, for a few years, he did not take any action, since he was satisfied with the improvement made in the lands; that apart from that, the entire amount has been spent in the land; that even if there was any grievance for the complainant that some part of the amount has not been spent, then, it was only a civil transaction between the parties; that the parties can have recourse before a Court of civil law; that it is not a fit case where they can go to the criminal side or the criminal proceedings be initiated; that it is a false and frivolous case investigated by the police and taken cognizance

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by the lower Court, and under the circumstances, they are entitled for discharge in the hands of this Court.

10. The learned Senior Counsel appearing for the third accused in both the cases would submit that it is true that the complainant's husband wanted to purchase lands; that as a friend of the husband of the complainant, the third also contacted the owners of the property along with the first and the second accused; that the property was purchased on verification of the title deeds and also after seeing the lands; that the complainant's husband was fully satisfied; that he has not taken any proceedings regarding the purchase of the lands during his lifetime; that after the property was purchased, since there was no yield as expected by the complainant, she has given a false complaint, and under such circumstances, in respect of the first case as to the purchase of the land for Rs.17,00,000/-, the third accused has got to be discharged.

11. Added further, the learned Senior Counsel for the third accused that so far as the second case was concerned, not even a single pie was received by the third accused from the complainant or her husband; that even the averments made in the F.I.R. would clearly indicate that all the amounts were received by way of demand drafts by the first and the second accused; that nowhere it is stated that it was received by the third accused; that apart from that, even assuming to be so, it was purely a civil transaction between the parties; that a false criminal colour has been given a civil dispute, and a case has been registered, and under the circumstances, in respect of this case also, the third accused is entitled for discharge.

12. In answer to the above, the learned Counsel for the second respondent, de-facto complainant, would submit that it is true that the third accused is the friend of the husband of the complainant; that on his assurance and misrepresentation that it would fetch a lot of income, the property was purchased believing his words; that the amount of Rs.17,00,000/- was also parted with; that had the misrepresentation not been made by the petitioners herein, the husband of the complainant would not have purchased the property, and thus, this would certainly constitute an offence under Sec.420 of I.P.C.; that on a complaint given, a case was registered and investigated, and a final report was filed, which was taken cognizance by the lower Court.

13. Added further the learned Counsel for the second respondent that so far as the second case was concerned, there is a documentary evidence to show that Rs.33,00,000/- was received by the first and the second accused on different dates by way of demand drafts; that at the time of getting these amounts, all the three accused came and met the complainant's husband; that at that time, the complainant was also present; that all the accused gave assurance; that it is true that the averments have not been made in the complaint against the third accused; but, the statements under Sec.161 of Cr.P.C. have been recorded from the complainant and other witnesses also, which

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would be pointing to the criminal conspiracy hatched up by the accused, pursuant to which they acted in collusion and got the amounts; that merely because of the fact it is not found in the F.I.R., which is not an encyclopaedia, it cannot be stated that A-3 is not in any way involved in the offence and the calendar cases cannot be tried and appreciated by a Court of law; that under the circumstances, all the accused are not entitled for discharge, and hence, all the criminal revision cases have got to be dismissed.

14. The contentions put forth by the learned Counsel for the second respondent, was reiterated by the learned Government Advocate for the first respondent, who would support the cases pending before the lower Court.

15. After hearing all the sides, this Court is of the considered opinion that so far as the case pertaining to the purchase of the lands for Rs.17,00,000/- in C.C.No.7571 of 2003 is concerned, all the three accused have got to be discharged, but not the other case in C.C.No.7572 of 2003.

16. It is an admitted position that the third accused is the friend of the complainant's husband. It is also not in controversy that he went and verified the property and title deeds, and thus, he had purchased the property. Needless to say that he is not an illiterate or ignorant; but, he is a Doctorate in Physics. This would go to show that on verification of the title deeds and property, he should have purchased the property. It is also pertinent to point out that the property was purchased from the third parties namely the owners, and the same was not from the three accused. Once the title has passed to the complainant's husband from the hands of the third parties for a consideration of Rs.17,00,000/- as found in all the sale deeds, it cannot, at this point of time, be stated that only on the misrepresentation of the third accused or the first or the second accused, the complainant's husband had purchased the property. Hence, this Court is of the considered opinion that the sale transaction between the parties would not attract the provision of definition of cheating under Sec.415 of I.P.C. Under such circumstances, in respect of the Calendar Case as to the purchase of the property for Rs.17,00,000/-, all the three accused have got to be necessarily discharged.

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17. So far as the second Calendar Case is concerned, there are specific allegations that pursuant to a conspiracy hatched up by the three accused, they came and met the husband of the complainant and got amounts to the tune of Rs.33,00,000/- by way of demand drafts. Admittedly, there is documentary evidence, as could be seen from the available materials, for the receipt of Rs.33,00,000/- by way of demand drafts. At this juncture, it has to be pointed out that so far as the revision case filed by the accused 1 and 2 is concerned, it has been averred that Rs.33,00,000/- would include Rs.17,00,000/- for the purchase of the property also. But, according to the complainant, it was not so, and the property was purchased for Rs.17,00,000/-, and Rs.33,00,000/- has been received by the three accused in the

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year 1998 and subsequently at different points of time by way of demand drafts on their assurance of making the land fertile and for irrigation purposes. It is the further case of the complainant that when there was an inspection made by the complainant and her husband, nothing had happened. A perusal of the complaint would indicate that the entire amount has been swallowed by the accused. Under the circumstances, the contention put forth by the learned Counsel for the petitioners/accused 1 and 2 that it is a civil transaction, and the entire amount has been spent, and if to be recovered, they should go to a Court of civil law, at no stretch of imagination, can be countenanced.

18. So far as the third accused is concerned, the contention of the learned Senior Counsel that not even one pie was received by the third accused, and hence, he is not involved in the offence, and he has got to be discharged, cannot be countenanced for the simple reason that there are specific averments in the complaint that all the three accused met the complainant's husband and got the amounts at different points of time by way of demand drafts which were drawn in favour of the first and the second accused. Under the circumstances, it is a matter for appreciation by the lower Court at the time of adducing evidence oral and documentary by both the parties. This Court cannot sit over the judgment what is expected to be done by the trial Court on the merits of the matter. Since there are no sufficient materials brought to the notice of the Court in a case like this, this Court cannot discharge the accused in the proceedings in C.C.No.7572 of 2003.

19. Hence, Crl.R.C.Nos.839 and 841 of 2004 are allowed, and the three accused are discharged from the proceedings in C.C.No.7571 of 2003 on the file of the Additional Chief Metropolitan Magistrate, Madras.

20. In view of the reasons stated above, Crl.R.C.Nos.838 and 840 of 2004 fail, and they are dismissed. Consequently, connected Crl.M.Ps. in all the revision cases are closed.

3-3-2005

nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To;
1. The Additional Chief Metropolitan Magistrate
Egmore, Madras.
2. -do- Thro' The Chief Metropolitan Magistrate
Egmore, Madras.

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3. The Inspector of Police
   Central Crime Branch
   Egmore, Chennai

4. The Public Prosecutor
   High Court, Madras.

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